



HOME BUILDERS ASSOCIATION OF CONNECTICUT, INC.  
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*Your Home  
Is Our  
Business*

RB 18

February 16, 2010

To: Senator Joseph Crisco and Representative Steve Fontana, Co-Chairs, and  
members of the Insurance & Real Estate Committee

From: Bill Ethier, CAE, Chief Executive Officer

Re: RB 18, AAC Real Estate Brokers and Salespersons

The HBA of Connecticut is a professional trade association with 1,100 member firms statewide, employing tens of thousands of Connecticut citizens. Our members are residential and commercial builders, land developers, home improvement contractors, trade contractors, suppliers and those businesses and professionals that provide services to our diverse industry. We estimate that our members build 70% to 80% of all new homes and apartments in the state.

We support RB 18 for the same reasons we supported last year's bill to except certain employees of a new home builder from real estate licensing requirements. It is unfortunate last year's bill could not be reconsidered this year and it may be not until next year it can be heard again. Nonetheless, since some of our builder members build apartments for their own account and, therefore, become landlords, we are compelled to comment on RB 18.

**Background:** CT's real estate licensing law ensures that third parties (i.e., real estate brokers or agents) afford some level of protection to their clients (i.e., sellers or buyers, owners or tenants, of real estate). Under section 20-329, a property owner is exempt from real estate licensing when selling or renting their own property. There are eight additional exemptions from licensing under CT law, including an owner's employees who are on-site residential superintendents or custodians, and all employees of nonprofit housing developers. RB 18 proposes a tenth exemption.

**The Problem:** For a landlord, the "owner" exemption is afforded to only the real person or persons who hold an ownership interest in the company. Non-owner employees of the landlord, except for on-site superintendents or custodians, are not provided an exemption. This prevents other employees of the landlord from engaging in many activities with prospective tenants. **Oddly, RB 18 proposes to provide a limited exemption for the employees of a LLC that contracts with a landlord but not salaried employees of the landlord itself. We urge you to redraft the language to include the salaried employees of the landlord.**

The exemption in the bill is for a very limited set of activities that could be conducted by an employee. It covers only exhibiting a unit to prospective tenants, providing factual information about the leasing of residential real estate, accepting applications for the lease of units, and accepting security deposits and rent payments made payable to the landlord. Under the bill, the employees cannot negotiate the terms of any lease on behalf of the owner.

**Regarding an LLC that contracts with a landlord, we agree with this restriction. By definition, these contract LLCs are third parties. We do not agree such a restriction should apply to a landlord's own employees since these employees are not third parties.**

**In addition to the allowable activities described in the bill, a landlord's own employees should be able to 1) explain how a unit or the complex is constructed or designed, 2) walk a prospective tenant through a complex, not just a unit, to exhibit common features enjoyed by tenants, 3) answer questions about unit features or available options, such as floor or wall coverings or other items that are sometimes customizable for rented units, or 4) hand out a brochure about the units or complex, not just "factual information about the leasing of residential real estate," to prospective tenants. The inability of a landlord's own employees from undertaking such basic practices for the very company they work for is frustratingly mind-boggling. Moreover, a landlord's own employee is going to know the units and complex they rent to tenants much better than any third party. Thus, tenants and prospective tenants will be better served if they can freely talk with a landlord's employees. After all, there's no limit on talking with a live-in custodian or with any employee of a non-profit housing corporation or a manager of a federal section 8 housing unit or complex.**

Many landlord owners cannot physically be present on site to welcome and deal with prospective tenants. Many cannot afford to hire as an employee a licensed broker or agent. It is simply unreasonable to expect that all an employee can do when working with prospective tenants of residential units is say, "I'm sorry, you can speak only with the owner of the company. Here's her card." The owner landlord may be out managing other aspects of the business or at different rental sites or engaged in other businesses. Deferring a prospective tenant, particularly in this economy, not only risks losing that tenant but also does a disservice to the prospective tenant who expects and deserves immediate attention.

**As for protecting the landlord, all employees of a landlord (including the owner of the company) are in essence and reality the voice of the company. Each speaks for the company in the capacity for which they were hired. No employee is a "third party" in the same shoes as real estate brokers or agents, who act in a fiduciary capacity in a property rental transaction. A landlord does not need fiduciary or statutory protection from its own employees. The interests of the landlord are protected through the employer-employee relationship. Unlike third-party brokers or agents, employees serve under the control and direction of their employer. A landlord's employees should not have to be licensed as real estate brokers or agents in order to "protect the interests of their own company employer."**

**As for protecting tenants, most tenants today come to rentals unrepresented by an agent. Even when an agent is involved, most must defer to the landlord or its employees to answer questions. Moreover, if a landlord's employee is licensed, they represent the owner, not the tenant. Finally, tenants can always hire their own broker or agent in any case.**

**We strongly urge your support and expansion of RB 18 to create another rational, reasonable exemption to the application of the real estate licensing law.**

Thank you for the opportunity to comment on this legislation.